

AMENDED IN ASSEMBLY SEPTEMBER 6, 2001

AMENDED IN SENATE AUGUST 28, 2001

AMENDED IN SENATE JULY 18, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

**SENATE BILL**

**No. 86**

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**Introduced by Senators Peace and Burton**

June 12, 2001

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An act to amend Section 25534 of the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 86, as amended, Peace. Powerplant facility and site certification.

The existing Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission to certify sufficient sites and related facilities that are required to provide a supply of electric power sufficient to accommodate projected demand for power statewide. The commission administers existing law with respect to energy conservation. Existing law authorizes the commission, after hearings, to amend the conditions of, or revoke the certification for, any facility for specified reasons and to administratively impose a civil penalty for specified violations of a certification of up to \$50,000 per violation, as prescribed.

Existing law establishes in state government the California Consumer Power and Conservation Financing Authority, with powers and responsibilities as prescribed, including the power to issue revenue

bonds, for the purpose of augmenting electric generating facilities and to ensure a sufficient and reliable supply of electricity, financing incentives for investment in cost-effective energy-efficient appliances and energy demand reduction, achieving a specified energy capacity reserve level, providing financing for the retrofit of inefficient electric powerplants, renewable energy and conservation, and, where appropriate, developing strategies for the authority to facilitate a dependable supply of natural gas at reasonable prices to the public.

This bill would authorize the commission to administratively impose a civil penalty for specified violations of up to \$75,000, as prescribed.

The bill would require a project owner to commence construction of a project within ~~6~~ 12 months after the project has been certified by the commission. The bill would require a project owner to submit preconstruction and construction milestones within 30 days after project certification. The bill would specify that the failure of the project owner to meet preconstruction or construction milestones, without a finding of good cause, is cause for possible revocation of certification or the imposition of other penalties.

This bill would require the commission to revoke the certification and provide immediate notice of its decision to the authority if the project owner fails to commence construction, without good cause, within ~~6~~ 12 months after the project has been certified. The bill would require the authority, within 90 days, to evaluate whether to pursue the revoked project independently or in conjunction with any other public or private entity, including the original certification holder. If the authority informs the commission, within the ~~90-day~~ 90-day period, that it will construct the project, the bill would require the commission to promptly issue a new certification for the project to the authority, *unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. The bill would specify that those provisions do not apply to specified qualifying small power production facilities or qualifying cogeneration facilities, as provided, or any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load.*

The bill would authorize the commission and authority to jointly adopt emergency regulations for the purposes of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Reliable, reasonably priced electricity service is essential for California's economic growth and for the health and welfare of its citizens.

(b) The federal Energy Policy Act of 1992 undermined the incentive of California's regulated utilities to build new generation plants and caused a decade-long lag in powerplant construction in California. This federally-driven construction lag has contributed to a tight supply situation where unregulated electricity marketers and generators have exercised market power to extort high electricity prices and undermine the economic welfare and electric system reliability of California and other western states.

(c) The Legislature, through Assembly Bill 970 of the 1999-2000 Regular Session and Senate Bill 28 of the 2001-02 First Extraordinary Session, and the Governor, through Executive Orders issued pursuant to his emergency powers, have acted to expedite the construction of in-state electric generation facilities by accelerating the State Energy Resources Conservation and Development Commission's powerplant certification process, signed long-term contracts for the electricity production of planned facilities, and provided incentives for rapid powerplant construction.

(d) However, since it is critical for the welfare of the state and its citizens that entities that obtain certifications to construct new powerplants and to expand or repower existing powerplants do so with all due speed, it is the policy of the state to condition the issuance of powerplant certifications to require prompt, continuous, good faith efforts to construct the certified project within its original construction schedule.

(e) It is further the policy of the state that, in the event a certification holder fails to demonstrate prompt, continuous, good faith efforts to construct new powerplants or to expand or repower existing powerplants, the commission shall revoke the certification of the original project owner and issue a new certification to the California Consumer Power and Conservation Financing Authority to construct the project if the authority timely informs the commission that it will construct the project either

1 independently or in conjunction with any other public or private  
2 entity, including the original certification holder.

3 SEC. 2. Section 25534 of the Public Resources Code is  
4 amended to read:

5 25534. (a) The commission may, after one or more hearings,  
6 amend the conditions of, or revoke the certification for, any facility  
7 for any of the following reasons:

8 (1) Any material false statement set forth in the application,  
9 presented in proceedings of the commission, or included in  
10 supplemental documentation provided by the applicant.

11 (2) Any significant failure to comply with the terms or  
12 conditions of approval of the application, as specified by the  
13 commission in its written decision.

14 (3) A violation of this division or any regulation or order issued  
15 by the commission under this division.

16 (b) The commission may also administratively impose a civil  
17 penalty for a violation of paragraph (1) or (2) of subdivision (a).  
18 Any civil penalty shall be imposed in accordance with Section  
19 25534.1 and may not exceed seventy-five thousand dollars  
20 (\$75,000) per violation, except that the civil penalty may be  
21 increased by an amount not to exceed one thousand five hundred  
22 dollars (\$1,500) per day for each day in which the violation occurs  
23 or persists, but the total of the per day penalties may not exceed  
24 fifty thousand dollars (\$50,000).

25 (c) A project owner shall commence construction of a project  
26 within ~~six~~ 12 months after the project has been certified by the  
27 commission. The project owner shall submit preconstruction and  
28 construction milestones to the commission within 30 days after  
29 project certification. Preconstruction milestones shall require the  
30 start of construction within the ~~six~~ 12 month period established by  
31 this subdivision. If the 30-day deadline to submit preconstruction  
32 and construction milestones to the commission is not met, the  
33 commission shall establish milestones for the project.

34 (d) The failure of the project owner to meet preconstruction or  
35 construction milestones, without a finding by the commission, *or*  
36 *the executive director of the commission*, of good cause, shall be  
37 cause for revocation of certification or the imposition of other  
38 penalties by the commission. A finding by the commission that  
39 there is good cause for failure to meet milestones shall be made if

the commission, *or the executive director of the commission*, determines that any of the following criteria are met:

(1) The change in any milestone does not change the established milestone for the start of commercial operation.

(2) The milestone is changed due to circumstances beyond the project owner's control.

(3) The milestone will be missed but the project owner demonstrates a good faith effort to meet the project milestone.

(4) The milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project milestone.

(e) If the project owner fails to commence construction, without good cause, within ~~six~~ 12 months after the project has been certified by the commission, the commission shall revoke the certification and provide immediate notice of its decision to the California Consumer Power and Conservation Financing Authority. The authority shall, within 90 days, evaluate whether to pursue the revoked project independently or in conjunction with any other public or private entity, including the original certification holder. If the authority informs the commission, within the 90-day period, that it will construct the project either independently or in conjunction with any other public or private entity, including the original certification holder, the commission shall promptly issue a new certification for the project to the authority, *unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired.*

(f) *Subdivisions (c), (d), and (e) shall not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Part 292.101 to 292.602, inclusive), nor shall those subdivisions apply to any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load.*

(g) To implement this section, the commission and the California Consumer Power and Conservation Financing Authority may jointly adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of

1 Division 3 of Title 2 of the Government Code. For purposes of that  
2 chapter, including, without limitation, Section 11349.6 of the  
3 Government Code, the adoption of the regulations shall be  
4 considered by the Office of Administrative Law to be necessary  
5 for the immediate preservation of the public peace, health and  
6 safety, or general welfare.

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